

INTERACTIVE VOICE RESPONSE AND RELATED SERVICES AGREEMENT

This Agreement, which shall include the exhibits hereto (the "Agreement"), is entered into on this 20th day of June, 2007 ("Effective Date"), by and between **Symago L.L.C.**, a Maryland Limited Liability Company ("Symago"), with offices at 7212 Antares Drive, ~~Germantown~~ ^{Gaithersburg} MD 20879 and **North Carolina Education Lottery** ("NCEL"), with offices at 2100 Yonkers Road, Raleigh, NC 27604.

RECITALS

WHEREAS, Symago is a developer and owner of certain proprietary technology and software useful for automating telephone-based, network-based and Internet-based transactions (collectively "Automated Transactions");

WHEREAS, Symago, submitted a bid, dated 4/27/07 attached hereto as Exhibit A and incorporated herein by this reference ("Bid"), to NCEL in response to NCEL's Invitation to Bid # LC-000013 on Interactive Voice Response ("IVR") Application and Related Services, dated April 4, 2007, attached hereto as Exhibit B and incorporated herein by this reference ("ITB"), as interpreted by NCEL's Answers to Questions concerning the ITB, which were published by NCEL on April 20, 2007, attached hereto as Exhibit C and incorporated herein by this reference ("Answers"); and

WHEREAS, NCEL desires to purchase certain IVR hosting services from Symago utilizing hosted hardware & software and a custom developed lottery application related to Automated Transactions;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1: SCOPE

NCEL shall purchase from Symago the IVR services contemplated by this Agreement, including but not limited to the Statement of Work attached hereto as Exhibit D and incorporated herein by this reference ("SOW"), the ITB and Answers (collectively, the "Services"). Subject to the terms and conditions of this Agreement, Symago shall provide the NCEL these Services.

SECTION 2: PAYMENT; DELIVERY; ACCEPTANCE

2.1 As full and complete compensation for the Services provided by Symago pursuant to this Agreement, NCEL shall pay a fee of \$0.059 per minute ("Fee") for every telephone call and call transfer processed by the Hosted IVR solution. NCEL shall electronically pay all invoices within 30 days of receiving an invoice. The NCEL will not be responsible for any taxes levied on Symago or any subcontractor as a result of the execution, delivery or performance of this Agreement. Symago and any subcontractors shall pay and discharge any and all such taxes in a timely manner.

2.2 Upon application completion and configuration for the Services, the NCEL shall promptly conduct acceptance testing to ensure the application meets the requirements set forth in Exhibit D. Upon determination that the Services meet the requirements set forth in Exhibit A, the Services shall be deemed accepted and NCEL shall execute a Requirements Acceptance Form. In the event that NCEL believes the Services, or any portion thereof, do not meet the requirements set forth in Exhibit A, NCEL shall promptly notify Symago in writing that it is rejecting the Services, or portions thereof, and shall identify the deficiencies in detail. Upon receipt of NCEL's rejection, Symago shall correct any actual deficiencies and redeliver the Services, or portion thereof that was rejected, to NCEL for acceptance testing. Notwithstanding the foregoing, the Services shall be deemed accepted for purposes of this Agreement if the NCEL does not reject them, in the manner provided above, within five (5) business days of delivery.

2.3 In the event Symago is unable to provide the Services during the term of the Agreement such that the IVR hosting services for NCEL are not functioning properly so as to materially and negatively impact the Services ("Downtime"), and such Downtime continues for a period longer than thirty (30) consecutive minutes ("Grace Period"), the NCEL shall have the right to assess Symago for liquidated damages based upon a percentage rate of Symago's Fee for the month in which such Downtime occurs. The foregoing percentage shall be 1% for each consecutive hour, or portion thereof, the Downtime continues beyond the Grace Period. Routine and pre-scheduled maintenance that is pre-approved by the NCEL shall be excluded from Downtime. Such maintenance shall be performed at times that minimize the impact on the Services.

SECTION 3: INTELLECTUAL PROPERTY

3.1 License Rights. The parties acknowledge and agree that no rights in or to any intellectual property is being transferred under or in connection with this Agreement.

3.2 NCEL represents and warrants that it is not under any intellectual property, contractual or legal restrictions that would be violated by the performance of Symago's obligations under this Agreement.

3.3 Symago represents and warrants that its Services and performance under the Contract and all other deliverables, written materials, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by Symago in connection with this Agreement (collectively, the "Work Product") does not, and will not during the term of this Agreement, infringe any U.S. patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity, and that it and they will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.

3.4 Symago agrees to indemnify and hold harmless the NCEL, its officers, Commissioners, agents, retailers and employees and the State of North Carolina from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses of any nature or kind, including, without limitation, court costs, attorneys' fees and other damages, arising out of, in connection with or resulting from the possession, license, or use of any intellectual property by Symago. To the extent contractually permitted, Symago shall pass through to NCEL all third-party intellectual property indemnities for the Services.

SECTION 4: WARRANTY

4.1 Symago warrants that software developed by Symago under this Agreement shall perform in substantial conformance with the requirements of Exhibit A and that all Services will be performed in a workmanlike manner consistent with the highest standards of the industry in which the Services are performed.

4.2 Symago does not provide, and hereby disclaims, any warranty regarding third-party software and equipment provided by Symago to NCEL. Symago shall pass through to NCEL any third-party party warranty that Symago has the right to pass through to NCEL. Symago shall not be liable to NCEL for any breach of the third-party party warranty.

4.3 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND SYMAGO MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY PRODUCT OR SERVICES INCLUDING THEIR CONDITION, THAT THE PERFORMANCE SHALL BE ERROR FREE OR UNINTERRUPTED, OR THE EXISTENCE OF



ANY LATENT OR PATENT DEFECTS, AND SYMAGO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND ALL WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, DEALING, CUSTOM, USAGE OR TRADE.

SECTION 5: TERM; TERMINATION

5.1 This Agreement shall commence on the Effective Date and continue for a period of three (3) years, unless terminated earlier in accordance with the provisions contained herein.

5.2 Either party may terminate this Agreement upon written notice at any time prior to the expiration of its stated term in the event that the other party is in default with respect to any material term or condition of this Agreement and such failure or default continues unremedied for a period of thirty (30) days following written notice of such failure or default.

SECTION 6: CHOICE OF LAW; DISPUTES; VENUE

This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina, without regards to the conflicts of law principles thereof. Any and all claims, controversies or disputes arising out of or in connection with this Agreement shall be resolved in accordance with this Section.

The parties consent to the exclusive jurisdiction of the state and federal courts located in Wake County, North Carolina, for any such action, suit or proceeding. The parties waive any objection to the laying of venue for any suit, action or proceeding in such courts. Prior to bringing any judicial enforcement action with respect to any claims or controversies arising in connection with the performance of this Agreement, Symago must first pursue and exhaust any and all remedies available to it in accordance with the dispute resolution procedures adopted by the NCEL, as amended from time to time (collectively, the **"Dispute Resolution Procedures"**). Upon exhaustion of the foregoing remedies, any party may bring an action, suit or proceeding in the courts located in Wake County. The hearing of such action, suit or proceeding shall be *de novo*, and any decisions or findings of facts during the NCEL administrative dispute resolution process shall not be binding on the courts or parties. The provisions of this Section shall survive the termination or expiration of this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

7: CONFIDENTIALITY

7.1 Confidential Information shall mean software and other information of the parties when it is presented in printed, written, graphic, or photographic or other tangible form (including information received, stored or transmitted electronically) and marked as "confidential" or "proprietary" by the disclosing party. Confidential Information also includes information of the parties, when presented in oral form, that is recorded as written minutes or notes of such oral presentations and which are marked "confidential" or "proprietary" and provided to recipient within thirty (30) days after the date of disclosure.

7.2 Pursuant to this Agreement, each party (the "Discloser") may, from time to time, furnish the other party to this Agreement (the "Recipient") with certain Confidential Information. Recipient will use the same care to avoid disclosure of such Confidential Information as it uses with its own similar confidential information which it does not wish to disclose, but such standard of care shall not be less than a reasonable standard of care. The Confidential Information, including any trade secret, confidential or proprietary information contained within the Confidential Information, is not to be disclosed to any persons other than the employees of Recipient. However, Confidential Information may be disclosed to counsel, consultants, subcontractors or agents of the Recipient who have a need to know and have been instructed that it is Confidential Information.

7.3 The disclosure of Discloser's Confidential Information does not grant to the Recipient any license or rights to any trade secrets, or under any patents or copyrights, except as expressly provided by the licenses granted in this Agreement. Except as otherwise provided in this Agreement, all Confidential Information is provided by the Discloser on an "as is" basis.

7.4 The obligations of Recipient with respect to any particular portion of Confidential Information shall terminate (or shall not attach) when any of the following occurs:

- (A) It was in the public domain at the time of Discloser's communication to Recipient.
- (B) It entered the public domain through no fault of Recipient subsequent to the time of Discloser's communication to Recipient.
- (C) It was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication to Recipient.
- (D) It was independently developed by Recipient.



7.5 A party may disclose Confidential Information to the extent required by law, valid subpoena, or court or government order.

8: LIMITATION ON LIABILITY

8.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, DATA OR GOODWILL, BUSINESS INTERRUPTION, OR FOR LIABILITY TO THIRD PARTIES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE FURNISHING, PERFORMANCE, OR USE OF THE SOFTWARE AND ANY EQUIPMENT AND/OR SERVICES PROVIDED FOR IN THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

8.2 NOT WITHSTANDING ANYTHING ELSE TO THE CONTRARY, THE PARTIES AGREE THAT SYMAGO'S MAXIMUM AND CUMULATIVE TOTAL LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE FEES ACTUALLY PAID TO AND RECEIVED BY SYMAGO.

8.3 The limitations set forth in this section shall apply even if any other remedies fail of their essential purpose.

9. OBLIGATIONS OF SYMAGO

9.1 Symago must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement a performance bond (the "Performance Bond") or letter of credit with NCEL in an amount equal to Fifty Thousand Dollars (\$50,000). The Performance Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of Symago's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, Symago's obligation to indemnify NCEL pursuant hereto, and/or Symago's failure to fully and completely pay any obligation contained in this Agreement.

9.2 Symago shall maintain the following types and amounts of insurance during the term of this Agreement:

- a) General liability insurance in the amount of \$1,000,000; and

- b) Workers Compensation Insurance at or above levels required by the State of North Carolina for Symago employees domiciled in North Carolina.

9.3 Symago shall provide the NCEL with certificates of insurance within ten (10) days after the date hereof and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of Symago by this Agreement must be issued by companies or financial institutions which are financially rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

9.4 Symago acknowledges and agrees that, prior to the expiration of the term of this Agreement, NCEL will award a new contract for replacement of the Services and deliverables provided by Symago under this Agreement and that Symago has no right or expectation in or to any such new contract. Symago further agrees that NCEL may use the final one hundred eighty (180) days of the term of this Agreement for transitioning the provision of such Services. Symago shall cooperate fully and in good faith and shall assist NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner.

10: MISCELLANEOUS

10.1 Notice. All notices, orders, directives, requests or other written communications required or permitted to be given or sent pursuant to this Agreement, shall be deemed given if mailed first class and addressed as follows:

In the case of NCEL, to:

North Carolina Education Lottery

Attention: Tom Shaheen, Exec. Director

2100 Yonkers Road

Raleigh, NC 27604

In the case of Symago, to:

Symago, LLC

Attention: Emily Wang

7212 Antares Drive

Gaithersburg, MD 20879

10.2 No Joint Venture. This Agreement is not intended by the parties to constitute or create a joint venture, partnership or formal business organization of any kind. The rights, responsibilities and obligations of the parties are limited to those stated in this Agreement. The parties shall be deemed to be independent contractors; one party cannot bind the other, and the employees of one party shall not be deemed to be employees of the other.

10.3 Complete Agreement. This Agreement, including the exhibits, constitutes the entire agreement between the parties and supersedes and renders null and void all prior or contemporaneous agreements, understandings and proposals, whether oral or written, between the parties relating to the subject matter of this Agreement.

10.4 Severability. Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without in any manner affecting the remaining provisions of this Agreement in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

10.5 Assignability. Neither party shall be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, except with the written consent of the other party. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Notwithstanding the foregoing, Symago may assign this Agreement in the event of the sale of all or substantially all of its assets or equity.

10.6 No Waiver. A failure by either party to assert its rights under this Agreement shall not be deemed to be a waiver of such rights nor shall any waiver be implied from any act or omission. All waivers to be effective must be in writing. No waiver by either party with respect to any right shall extend its effect to any subsequent breach of this Agreement of like or different kind unless such waiver explicitly provides otherwise.

10.7 Amendments. This Agreement may be altered, modified, or amended only by a written agreement duly executed by both parties.

10.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which when taken together will constitute one agreement between the parties.

10.9 Force Majeure. Neither party shall be deemed in default if its performance of obligations hereunder is delayed or becomes impossible or impractical by reason of any act of God, war, fire, earthquake, strike, epidemic, or any other cause beyond such party's reasonable control.

10.10 Survival. Sections 6, 7, 8 and 10 shall survive termination of this Agreement for any reason.

10.11 Construction of this Agreement and Certain Terms and Phrases.

(A) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement and not to any particular provision of this Agreement; and (iv) the terms "Section" and "Exhibit" refer to the specified Section and Exhibit, respectively, of this Agreement.

(B) The words "including," "include" and "includes" are not exclusive and shall be deemed to be followed by the words "without limitation"; if exclusion is intended, the word "comprising" is used instead.

(C) The word "or" shall be construed to mean "and/or" unless the context clearly prohibits that construction.

(D) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified.

(E) Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

(F) The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.12 Order of Precedence. In the event of a conflict or contradiction between the terms and provisions of this Agreement, the SOW, the Bid and/or the ITB, the documents shall take precedence in the following order:

(A) this Agreement ;

(B) the ITB;

(C) the Answers; and



(D) the Bid.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above-written. Each party represents and warrants that its respective signatory is duly authorized to execute this Agreement on its behalf.

Symago, L.L.C.

North Carolina Education Lottery

By: Anthony Wang

By: Thomas Shaheen

Name: Anthony Wang

THOMAS SHAHEEN
Name: _____

Title: President

EXECUTIVE DIRECTOR
Title: _____

Date: 6.20.07

Date: 6/21/07

